

K. Narahari Vs. U. Suresh Kumar and Another

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Court : Andhra Pradesh

Decided On : Apr-11-2000

Reported in : I(2001)ACC92; 2001ACJ1383; 2000(3)ALD745; 2000(3)ALT627

Judge : N.Y. Hanumanthappa and ;A. Gopal Reddy, JJ.

Acts : Motor Vehicle Act, 1988 - Sections 147

Appeal No. : AAO No. 758 of 1995 and CMP No. 17781 of 1998

Appellant : K. Narahari

Respondent : U. Suresh Kumar and Another

Advocate for Def. : Mr. Kota Subba Rao for Mr. R. Venkata Rao, Adv.

Advocate for Pet/Ap. : Mr. M. Rama Rao, Adv.

Judgement :

ORDER

A. Gopal Reddy, J.

1. This appeal is filed by the claimant for enhancement of compensation awarded by the Chairman, Motor Accidents Claims Tribunal (DistrictJudge), Nalgonda in OP No.802 of 1992 dated 24-12-1994.

2. The claimant who is a practising advocate met with an accident while he was proceeding along with his friend in Maruthi car Bearing No.A.P. 28-A 6708 from Hyderabad to Khammam on 15-5-1992 at 2-00 p.m., near Manikyalammagudem. According to the claimant, the lorry Bearing No.APH 7272 came in opposite direction, in a rash and negligent manner with high speed and dashed the car resulting injuries to the claimant herein and the petitioner in OP No.803 of 1992. The police, Narketpalli registered a case in Cr.No.65 of 1992 under Section 337 IPC against the driver of the lorry. The lorry was insured with the second respondent-Insurance Company. The petitioner sustained multiple injuries and fractures all over the body. The petitioner was treated as in-patient in Osmania General Hospital. Afterwards, he was joined in Niveditha Nursing Home and he was there for about five months. As he sustained fracture-cum-dislocation of right hip joint, fracture of right knee, grievous head injury, and injuries on ribs, shoulder and other parts of the body. After operation, steel rods were inserted in his right leg. Due to multiple injuries, the petitioner was completely bed ridden and became permanently disabled. The petitioner incurred huge amount for getting the treatment, purchase of medicines, attendant charges. As he is un-married, chances to get the marriage are also affected. The petitioner cannot stand continuously for 15 to 30 minutes, due to which he cannot concentrate on his profession, which adversely affects his future earnings. Under those circumstances, he claimed a compensation of Rs.9,00,000/-.

3. The first respondent-owner of the lorry filed a counter denying the allegations with regard to the disablement, earning capacity and expenditure incurred by the petitioner. He also denied the rash and negligent driving of the driver of the lorry and the accident was only due to the rash and negligent driving of the claimant of the Maruthi car which the petitioner was driving and the petition is bad for non joinder of necessary parties i.e., owner of the Maruthi car and Insurance Company with which the car was insured.

4. The second respondent-Insurance Company with whom the lorry was insured resisted the claim by filing counter. It further stated that it does not admit that the person who drove the vehicle at the material point of time was having valid driving licence. They are not aware of the criminal proceedings launched against the

driver of the lorry.

5. The claimant examined himself as PW1 and examined the Doctor who treated the petitioner as PW2 and his co-passenger i.e., owner of the Maruthi car, who is claimant in OP No.803 of 1992 as PW3 and to marked Exs.A1 to A20. None were examined on behalf of the respondents and no documents were marked on their behalf. On appreciations of oral and documentary evidence, the Tribunal came to the conclusion that the accident took place due to head on collision between two vehicles and the same was due to composite negligence of the drivers of both the vehicles. In that view of the matter, the Tribunal found that the negligence on the part of the lorry driver was assessed at 70% and 30% contributory negligence on the part of the claimant, who was driving the car at the relevant time. On issue No.2 with regard to the compensation, the Tribunal came to the conclusion that the claimant is entitled to a sum of Rs.2,00,000/- towards compensation on all heads, but, as the negligence was only 70% on the part of the respondents, it awarded a sum of Rs.1,40,000/-. Assailing the same, the claimant filed the present appeal.

6. Learned Counsel appearing for the claimant strenuously urged that the finding of the lower Court that the accident was due to composite negligence is erroneous; merely because it is a head on collision, the lower Court is not justified in coming to the conclusion that the driver of the Maruthi car i.e., claimant is also negligent. Though it is stated in the counter of the first respondent that the accident was due to rash and negligent driving of the driver of the Maruthi car, the first respondent has not examined the driver which itself goes to show that the respondent No.1 purposefully withheld the examination of the driver of the lorry. Unless the respondents allege and prove the negligence on the part of the petitioner, who was driving the Maruthi car, the lower Court ought to have accepted the evidence adduced on behalf of the petitioner.

7. He further contended that the lower Court has not properly awarded the compensation and the Court failed to take into consideration the loss of future prospects due to disability suffered by the petitioner. Admittedly, the petitioner was in hospital for seven months and he has undergone pain and suffering, for which, the Court has awarded only a pailtry sum, which requires enhancement.

According to the learned Counsel the claimant is still unable to walk freely and requires another operation to set right the hip joint. In spite of the same, there is no possibility of correcting the shortening of the right leg. If all these factors have been taken into consideration in its proper perspective, the lower Tribunal ought to have awarded more compensation.

8. In support of his contention, learned Counsel for the claimant relied upon the following judgments.

(1). Rajuv. Managing Director, Chittoor Co-operative Sugars Limited, : 1996(1)ALT827 (DB).

(2) United India Insurance Company Limited v. Shaik Saibaqtualla, 1992 ACJ 858 (DB).

(3) Muthaiah Sekhar v. Nesamony TPT Corporation, (1998) 5 Scale 28.

The law is well settled that it does not call for copious citations and discussion and each case has to be decided basing upon the merits of the case and facts involved.

9. On the other hand, the learned Counsel for the Insurance Company supported the findings arrived by the Tribunal and argued that it is for the claimant to prove the negligence on the part of the lorry driver. In the absence of any acceptable evidence adduced by the claimant, the lower Tribunal has done some guesswork with regard to the negligence and awarded reasonable compensation.

10. In view of the rival contentions, the questions that arise for consideration are (a) whether the claimant has contributed any negligence for the accident occurred ? (b) Whether the compensation awarded by the lower Court is just and reasonable and if not what is the reasonable compensation the claimant would be entitled to.

11. The claimant examined himself as PW1. According to him, he was driving the Maruthi car on the fateful day. While he was proceeding from Hyderabad to Khammam, when they reached Manikyalammagudem, a lorry came in opposite direction in rash and negligent manner with high speed and dashed the car

resulting the petitioner and his co-passenger sustained grievous injuries and he lost consciousness and they stuck up in the car. The police also registered a case in Cr. No.65 of 1992. According to him, he was having seven years practice and was earning Rs.5000/- per month. He sustained grievous injuries and fractures all over the body on account of the accident. No doubt the petitioner had failed to file the sketch prepared by the police to show the scene of offence nor the report of the Motor Vehicles Inspector was produced. PW1 stated that when he noticed the lorry which coming in the opposite direction at high speed and coming towards their side and he swerved the vehicle towards further left down the road, inspite of the same, the lorry came and hit their car. In view of the same, the Tribunal held that the accident took place was due to composite negligence of both the drivers. So far as the finding that the lorry driver is negligent to 70% has not been challenged by the respondents.

12. The claimant also filed xerox copy of First Information Report-Ex.A1 and Ex.A3 is the copy of charge-sheet. The lower Tribunal, basing upon the evidence of PW1, who was driving the car, held that he himself stated in the evidence that he saw the lorry which was coming at a high speed to their right side and, therefore, he swerved his car further left down the road and inspite of that, the lorry came and hit their car. Ex.A3, the xerox copy of the charge-sheet shows that the police have filed a case against the driver of the lorry. Mere filing of the charge-sheet by the police against the driver of the lorry does not prove that the accident was solely due to the negligence of the driver of the lorry. PW1's evidence does not show the exact part on which the lorry hit the car. PW1 did not produce any Motor Vehicles Inspector's report to show that what are the parts of the car that were damaged. Only if the petitioner is able to show that the lorry hit the middle of the car, behind the driver's seat, there is possibility of negligence on the part of the driver of the lorry hitting the car. But if the accident was on head on collusion, front parts of the car, headlights of the car of PW1 etc., damaged, it would show that the car if not swerved to the extreme left to avoid hit by the lorry. In the absence of sketch to show that the lorry went extreme left side of the road, the evidence of the claimant cannot be believed and, therefore, it cannot be held that the claimant is not negligent and he has contributed to an extent of 30%.

13. The claimant now filed CMP No. 17781 of 1998 to receive certain documents as additional evidence. The documents filed are (1) certified copy of charge-sheet in Crime No.65 of 1992 of Police Station, Kattangur of Nalgonda District (CC No.42 of 1993 on the file of JFCM, Nakrekal); (2) Certified copy of panchanama dated 15-5-1992 conducted by the Police and also (3) certificate dated 17-6-1998 issued by Dr. S.V. Chandrasekhar Reddy, Consultant Orthopaedic Surgeon of Appollo Hospital, Hyderabad. As the petition was not opposed nor any counter is filed, the petition is allowed. A perusal of the panchanama clearly shows that the Maruthi car, which is completely damaged and the lorry hit the car on the drivers side which is completely damaged and the same is due to the negligence of the lorry driver and the lorry is 30' away from the middle of the road towards north which clearly shows that the car swerved towards left inspite of the same the lorry came and hit the car towards the right side of Maruthi car. PW1 in his chief-examination clearly stated that he swerved the vehicle towards further left down the road inspite of that, the lorry came to the further right and dashed the car. In the cross-examination also he reiterated that the lorry hit the car towards right side. The panchanama conducted by the Police clearly supports the version of PW1. The observation of the Tribunal that the claimant swerved the car further right down to the road and the lorry came and hit is erroneous cannot be accepted. PW1 has clearly stated that inspite of his swerving the car left the lorry came and dashed against the car clearly establishes that the driver of the lorry is negligent, but he has not contributed for the accident. In that view of the matter, the finding of the Tribunal that the claimant-PW1 is also negligent in driving the car cannot be accepted. The point No.1 is answered accordingly in favour of the claimant.

14. The next question that falls for consideration is what is the reasonable compensation the claimant is entitled to. The petitioner stated in his evidence that he was earning Rs.5,000/- to Rs.7,000/- per month on the relevant date and he is still unmarried and his marriage prospects have been affected due to physical disability. PW2 who is a Doctor who treated the petitioner in the Niveditha Nursing Home admitted that PW1 was admitted in their Nursing Home on 25-5-1992 with incomplete treatment for right hip joint done by the Osmania Hospital Doctors. He reopened the injury on 25-6-1992 and found that it was a complicated fracture dislocation of right hip joint and therefore he re-operated and refixed the nail and

the petitioner was discharged on 18-6-1992. He also deposed that he advised the petitioner to take bed rest and directed to visit the hospital on 8-7-1992. On the said date, he re-admitted him in the Hospital for physiotherapy treatment and he was in hospital from 1-7-1992 to 6-8-1992. The petitioner was again admitted in hospital on 20-12-1992 and nail pins were removed from his hip joint and he was discharged on 25-12-1992 and was advised to walk with the help of crutches. He also stated that the petitioner became disabled with deformity in right hip joint and is unstable as the head of femur is evacular, having pain, deformity and limping and shortening of right leg 2 inches x 2 1/2 inches which is a permanent one. He further stated that he has to use the crutches for support to carry on day to day activities and he may require another surgery in future to set right the hip joint and after that also, he may continued to be disabled. According to him, disability is 60% and he issued a certificate Ex.A4 to that effect. Ex.A18 is the case sheet issued by him in Niveditha Nursing Home and denied the suggestion that the treatment was exaggerated and injury does not require such treatment. Ex.A2 is the medical certificate issued by Osmania General Hospital regarding the medico legal case of the petitioner. It also shows that the petitioner had tenderness swelling on right hip, swelling tenderness in the middle of the chin, lacerated wound of 4 cm. x 1 cm., on the forehead. The petitioner filed Exs.A5 to A6, which are the discharge cards issued by Niveditha Nursing Hospital. Ex.A8 is the certificate issued by the Secretary, A.P. High Court Advocates' Association where he was practising recommended the case of the petitioner to the Bar Council for financial assistance. Ex.A11 is a bunch of five x-rays. Exs.A12 to A14 are the medical receipts. Exs.A18 and A19 are the case sheets maintained by Niveditha Nursing Hospital and Osmania General Hospital. The Tribunal while assessing the evidence, held that PW2 has not stated that the petitioner's practice has been affected or will affect in future.

15, The finding of the Tribunal that Ex.A8 will not help the claimant and the physical disability has to be established by medical expert and not by the members of Advocate Association is erroneous. PW2, the doctor, who was examined, has categorically stated that disability is 60% and accordingly he issued Ex.A4-certificate. What Ex.A8, the letter given by the President A.P. High Court Advocate's Association, discloses is that it has recommended to the Bar Council

for some financial help. The Tribunal holding that if the claimant is physically disabled, he could have abstained from the Bar Association and he is capable of practising and the Advocate's Association issued Ex.A8-certificate, which clearly shows that he is attending to the Court also is erroneous. After going through the award of the Tribunal and evidence on record, we are not inclined to accept the said findings of the Tribunal. In spite of voluminous evidence adduced, the claimant was not awarded the just compensation.

16. The question therefore is what is the reasonable compensation the claimant is entitled to ?

17. The Hon'ble Supreme Court in R.D. Hattangadi v. Pest Control (India) Private Limited, : [1995]1SCR75 , after scanning the evidence, where a lawyer met with an accident, held that while determining the compensation in the motor accident resulting in the disability, certain factors have to be considered viz., all different circumstances should have taken into account for computation of damages; that some guess work is permissible in computation of compensation. In Para 9 of the said judgment, the Apex Court held that damages have to be assessed separately i.e., pecuniary damages and non-pecuniary damages. The Court further held that whenever any amount is determined as the compensation payable for any injury suffered during the accident, the object is to compensate such injury 'so far as money can compensate' because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. Recently, the Supreme Court in Muthaiah Sekhar v. nesamony TPT Corporation, 1998 (5) Scale 28 (supra), after considering the pronouncement in Shashendra Lahari v. UNICEF and others, : (1997)11SCC446 , enhanced the compensation. Admittedly in the present case, the claimant has sufficiently put in seven years experience and stated that he was earning a sum of Rs.5,000-00 per month on the relevant date of accident. The same also appears to be reasonable as no person with an income less than Rs.5,000-00 will not be in a position to live in Hyderabad city, where he has to secure a house for his living and spent sufficient amount for transportation for attending various Courts. The Tribunal has awarded only a sum of Rs.20,000-00 for the loss of income for the period he was in hospital. But the claimant claimed loss of earnings for a period of

seven months at the rate of Rs.5,000-00 per month. Accordingly we award a sum of Rs.3 5,000-00 for the loss of earnings.

18. The claimant produced the medical bills and the transport charges, as he engaged a taxi to go to the hospital etc., and the Tribunal has awarded only a sum of Rs.80,000-00 and we see no justification for such restriction. Only with regard to the medical bills of Rs.10,000/-issued for consultation fee receipts by Kalinga Fractures Orthopaedic Clinic dated 10-4-1993, to prove the same, none were examined and the case of the claimant is that he underwent operation at Nivedita Nursing Home. In view of the same, the claimant is not entitled to the refund of the said amount. We accordingly award a sum of Rs. 1,36,000-00 towards the medical expenses and other expenses incurred by him. The claimant was admitted in the Osmania General Hospital for ten days i.e., from 15-5-1992 to 24-5-1992. Thereafter the claimant was admitted in Nivedita Nursing Home on 25-5-1992. PW2 re-operated the claimant on 26-5-1992 by re-fixing with nail and the claimant was discharged from the hospital on 18-6-1992 with an advice to take rest in the house and also asked to come for review on 8-7-1992. Thereafter, the claimant was re-admitted on 8-7-1992 for mobilisation and physiotherapy, the claimant was in the hospital from 8-7-1992 to 5-8-1992 for mobilisation and gait practice and he was discharged on 5-8-1992 and was advised to continue the same at his house and was asked to come to the hospital again on 19-12-1992. The claimant was re-admitted in the hospital on 19-12-1992 and the nail pin was removed from his hip joint on 20-12-1992 and was discharged on 25-12-1992 and was advised to walk with the help of crutches. The claimant suffered pain and suffering for nearly seven months and underwent physiotherapy etc., in all these days. In view of the same, the claimant is entitled for a sum of Rs.50,000-00 towards the pain and suffering undergone by the claimant. For all these days the claimant has taken the assistance of an attendant either in the hospital or at home and, therefore, the claimant is entitled for a sum of Rs.5,000-00 towards attendant charges.

19. According to PW2, he issued Ex.A4-certificate of disability and the disability was assessed at 60%. PW1, in his evidence, stated that since May, 1992, nearly one year, he was going round the hospitals till the date of his giving evidence i.e., 18-1-1994. If an advocate, who has put in seven years of practice and

discontinued for nearly two years of his practice, it is very difficult for him to again mobilise the work and regain the confidence of the clients. It is really difficult in this background to assess the exact amount of compensation and the future loss that is likely to be sustained by the injured. For determining the same, some guesswork has to be undertaken by the Courts for arriving such loss. In fact, from the date of filing the claim petition i.e., 12-11-1992 till the date of his evidence i.e., 18-4-1994 he is not attending the Courts that is nearly about fourteen months and if we assess the future loss at Rs.5,000-00 per month for all these months that itself comes to Rs.70,000-00 and in all the claimant is entitled to a sum of Rs.2,50,000-00 for the future loss of earnings which is just and reasonable. The claimant is unmarried and the accident will definitely diminishes the marriage prospects and he may not able to get a life partner of his choice due to disability, no doubt the same cannot be compensated in terms of money, but the Court has to award some compensation for disfigurement and under this head, the claimant is entitled to a sum of Rs.50,000-00. Admittedly, the claimant requires one more operation as spoken to by PW2 to rectify the defect, as the claimant is still walking with the help of crutches on the date when PW2 examined and still the claimant is attending the Courts with the help of stick in his hand due to the shortening of the right leg 2 1/2'. In view of the certificate, which is now filed in CMP No.17781 of 1998 to receive as additional evidence, shows that the claimant requires a minimum of Rs.1,50,000-00 for future operation. The same may appear to be an exaggerative figure. Going by the present day trend of medical expenditure, we think a sum of Rs.75,000-00 towards future expending for conducting operation and also other clinical examinations, would be reasonable and accordingly we award a sum of Rs.75,000-00 towards future medical expenditure,

20. For the foregoing reasons, the claimant is entitled to compensation for a sum of Rs.6,01,000-00, which was rounded off to Rs.6,00,000-00 together with future interest at 12% per annum from the date of petition till the date of realisation, on a sum of Rs. 5,25,000-00. It is clarified that the claimant is not entitled to interest on a sum of Rs.75,000-00 awarded for future medical expenditure. The amount, if any, paid shall be given credit.

21. In the result, the appeal is allowed in part as indicated above. There shall be no order as to costs.

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